

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN ROBERT DEMOS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA et al.,

Respondent.

CASE NO. 2:22-cv-00768-DGE

ORDER ADOPTING THE REPORT
AND RECOMMENDATION (DKT.
NO. 5)

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge. (Dkt. No. 5.) Having reviewed the R&R and Petitioner’s Objections (Dkt. No. 6), the Court enters the following Order.

I. DISCUSSION

Petitioner John Demos, Jr., a state prisoner, filed what the Clerk construed as a Proposed Petition for Writ of Habeas Corpus on June 2, 2022. (Dkt. No. 1.) Petitioner subsequently filed two applications to proceed *in forma pauperis* indicating he would like to file a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Dkt. Nos. 3, 4.) As the initial filing was difficult to

1 understand, the R&R concluded that Petitioner's filing should be construed as a petition for a
2 writ of habeas corpus. (Dkt. No. 5 at 1) (citing Dkt. No. 3 at 1.)


3 Petitioner is under pre-filing bar orders in multiple courts, including this Court. *See, e.g.,*
4 *Demos v. Storrie*, 507 U.S. 290, 290–91 (1993). An Order of this Court provides for the return
5 without filing of any petition that seeks an extraordinary writ pursuant to 28 U.S.C. §§ 1651,
6 2253 or 2254, unless accompanied by the requisite filing fee. *See Demos v. Stanley*, MC97-
7 0031-JLW (W.D. Wash. Mar. 13, 1997). The Court has carefully considered Petitioner's
8 Objections to the R&R. (Dkt. No. 6.) Petitioner does not contest the R&R's conclusion that he
9 seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court agrees with the R&R that
10 Petitioner's purported filing is properly construed as a petition for a writ of habeas corpus.
11 Therefore, Petitioner improperly filed his § 2254 petition because he did not pay the filing fee.

12 II. CONCLUSION

13 For the foregoing reasons, the Court ORDERS:

- 14 (1) The Court adopts the Report and Recommendation (Dkt. No. 5).
- 15 (2) Petitioner's federal habeas matter is administratively closed.
- 16 (3) A certificate of appealability is denied in this case.
- 17 (4) The Clerk is directed to send a copy of this Order to Judge Creatura.

18 Dated this 21st day of July 2022.

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21 David G. Estudillo
22 United States District Judge
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